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ABSTRACT

This paper provides an overview and assessment of Secretary Bennett's "bilingual education initiative" of 1985 including his intention to seek regulatory and legislative changes in the 1984 Bilingual Education Act. Following a brief introduction, a summary of the Federal statutes, policies, and proposals which have shaped policy on bilingual education over the last decades is presented. An overview of the Reagan administration's bilingual education proposals from 1981 through 1985 is included. Finally, the implications of the Bennett proposals and the recommendations of the National Council of La Raza for the future of bilingual education are presented and discussed. In brief, the paper asserts that Bennett's proposals would reduce the amount of Federal guidance and financial support for bilingual education. If implemented, it is argued, these proposals would deleteriously affect the extent and quality of educational opportunities available to limited-English proficient children (the majority of whom are of Hispanic origin). To avoid this outcome, the paper recommends that the Department of Education fully implement the terms of the Bilingual Education Act of 1984 and provide additional funding for programs operated under Title VII of the 1964 Civil Rights Act, especially the Special Alternative Instruction Programs and the Family English Literacy Programs. (KH)

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SECRETARY BENNETT'S BILINGUAL EDUCATION INITIATIVE: HISTORICAL PERSPECTIVES AND IMPLICATIONS

I. INTRODUCTION

On September 26, 1985 U.S. Secretary of Education William Bennett officially launched his "bilingual education initiative." In a speech before a New York business and civic organization, the Secretary termed the federal goverment's past policies and investment in bilingual education a "failure," and announced his intention to seek regulatory and legislative changes in the 1984 Bilingual Education Act. If adopted, these changes would reduce the amount of federal guidance accorded to school districts regarding appropriate programs for language-minority children. The move would also substantially reduce the amount of federal support available for bilingual education. In a separate press conference in Washington, Bennett's aides pressed these themes and indicated that the Department was not only seeking amendments to the Bilingual Education Act, but that changes in civil rights enforcement guidelines and activities regarding language-minority children were also being contemplated.

If implemented, Secretary Bennett's proposals would have a significant effect on the extent and quality of educational opportunities available to limited-English proficient children. It is the assessment of the National Council of La Raza that the effect would be deleterious to the education of these children -- the majority of whom are of Hispanic origin.

This paper provides an overview of the Bennett "bilingual education initiative." However, because of the complexity of federal bilingual education policy, and the consistency of the Bennett proposals with previous Reagan Administration bilingual education policy efforts, it also presents a summary of the federal statutes, policies and proposals which have shaped federal policy on bilingual education over the last two decades. An overview of the Reagan administration's bilingual education proposals from 1981 through 1985 is included. The implications of the Bennett proposals for the future of bilingual education and the recommendations of the National Council of La Raza are also presented and discussed.

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II. BACKGROUND

Federal policy in bilingual education has historically been composed of two distinct components: (1) measures to ensure that the educational rights of language-minority children are not violated, and (2) assistance to school districts choosing to implement a bilingual education programs. The policy is colloquially known as the "carrot and the stick" approach, with mandatory compliance with civil rights legislation and directives constituting the "stick," and the availability of discretionary funding for bilingual programs serving as the "carrot." Policies established to guarantee civil rights affect every school district in the United States. Policies established to provide financial assistance to school districts implementing bilingual programs affect only those school districts applying for and receiving federal funds for this purpose. While the policies are certainly interrelated, they derive their authority from very different statutes and are administered by different offices of the Department of Education.

A. Civil Rights of Limited-English Proficient Children

According to federal civil rights statutes, limited-English proficient children have a right to an equal educational opportunity, and school districts have the affirmative responsibility to remove the barriers posed by the students' limited proficiency in English. The Constitution guarantees equal rights under the law, and Title VI of the Civil Rights Act of 1964. The statute specifies that the ability to participate in or benefit from programs receiving federal assistance may not be denied on the basis of race, creed, sex or national origin. The Civil Rights Act also gives all agencies distributing federal funds the affirmative obligation to ensure that recipients of such funds do not violate civil rights. Thus, all federal agencies making grants or disbursing federal funds have the responsibility to monitor programs and recipients, to negotiate compliance with federal law, and -- in cases of non-compliance -- to delay or withhold further federal assistance. In the event of continued non-compliance, the agencies are to refer cases to the Department of Justice for prosecution. Efforts to alleviate barriers to equal educational opportunity for language-minority children are administered by the Department of Education's Office for Civil Rights (OCR).

During the Nixon Administration in 1970, the Office for Civil Rights -- at that time located in the Department of Health, Education and Welfare (HEW) -- distributed a memorandum to all school districts with five percent or more national-origin minority (NOM) enrollments. The memorandum advised districts that OCR reviews had uncovered a number of common practices which served to deny national-origin minority students an equal educational opportunity. Citing Title VI of the Civil Rights Act of 1964 as authority, the memorandum reminded school districts of the following four responsibilities:

1. Where inability to speak and understand English excludes NOM students from effective participation in the educational program of the school, the district must take affirmative steps to rectify the language deficiency in order to open its programs to these students;

2. School districts must not use criteria which measure or evaluate English language skills as the basis for assigning NOM children to classes for the mentally retarded, nor may these children be denied

access to college-preparatory courses on a basis directly relating to the school's failure to teach English;

3. Ability grouping or tracking systems must deal with the special language needs of NOM children, must meet those needs as quickly as possible, and must not operate as permanent tracks; and

4. School districts must notify NOM parents of school activities and such notice may have to be provided in a language other than English.

Lack of compliance with the Civil Rights Act and the 1970 Memorandum led to a variety of suits against school districts. In one instance, a group of Chinese parents sued the San Francisco school system for failing to provide any special services to non-English-speaking Chinese students. This case, Lau v. Nichols, was eventually decided by the Supreme Court in 1974. The Supreme Court refuted the district's contention that providing the Chinese students with the same teachers, texts and course of study available to fluent English speakers constituted equal educational opportunity, and ruled that San Francisco had violated Title VI of the Civil Rights Act of 1964. In directing the school district to fashion a remedy for its past denial of equal educational opportunity to the plaintiffs, Justice William O. Douglas wrote for the majority:

> There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum: for students who do not understand English are effectively foreclosed from any meaningful education. Basic skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

As the Court had not been asked to determine a specific instructional remedy, none was mandated; however, the Court suggested several approaches, including bilingual education. While the Court did not mandate bilingual education, the description in the decision of a school district's responsibilities certainly created a presumption in favor of bilingual education. Specifically, the Court said that: schools must teach non-English speaking children in a different way; they cannot expect children to learn English before they can learn other subjects; and they must use teachers, textbooks, and curricula that are different from those of other students and more suited to their language needs. While there may be other ways to comply with the Court's requirements, the Office for Civil Rights and most states and school districts have regarded bilingual education as the approach which best affords NOM students an equal educational opportunity.

After the Lau decision, the Office for Civil Rights issued a set of guidelines to be used by school districts in designing programs, and by OCR in monitoring compliance with the Civil Rights Act of 1964. These guidelines, popularly known as the Lau Remedies, were issued in 1975 during the Ford Administration under Commissioner of Education Terrel Bell. The Lau Remedies outlined appropriate educational approaches and required those school districts found out of compliance with Title VI of the Civil Rights Act, and which had 20 or more students of the same language group

with a primary or home language other than English, to file a compliance plan with OCR as quickly as possible. Those school districts with less than 20 students were still required to take affirmative steps, but their approach did not need to be as comprehensive as that undertaken by districts with larger numbers of students. However, all school districts were expected to identify each student's primary or home language, assess students' language proficiency and educational needs, design and provide appropriate educational services, ensure that required and elective courses are not discriminatory, hire qualified staff, end racial and ethnic isolation in schools and classes, adequately notify non-English-speaking parents of school policies and events, and design provisions to evaluate the effectiveness of their programs.

For elementary students identified as non- or limited-English proficient, the Remedies prescribed either transitional bilingual education, a bilingual/bicultural program, or a bilingual/multicultural program. English as a Second Language (ESL) by itself was not considered to be an acceptable approach for elementary school children However, ESL was deemed to be one of several appropriate approaches for secondary school non- or limited-English proficient students. Students identified as speaking both languages with equal facility were to be accorded special services only if they were achieving below grade-level, and a variety of approaches were described as permissible. A 1980 OCR review of the Lau Compliance plans of the 40 school districts serving the greatest numbers of limited-English proficient students showed all to be in compliance -- implementing some type of bilingual program at the elementary level, and either an ESL or bilingual program at the secondary level. [1]

Since the 1975 Lau Remedies had never been promulgated as regulations, some school districts contended that they should not have the weight of law. In Northwest Arctic v. Califano, the court upheld that contention and ordered HEW to promulgate official regulations. Meanwhile, and after much acrimonious debate, Congress had split HEW into two separate agencies, creating a new Department of Education. In one of its first official actions, the newly-created Department of Education published a notice of proposed rulemaking (NPRM) proposing regulations for compliance with the Lau decision. The NPRM -- which quickly became known as the Lau Regulations -- was actually somewhat more flexible than the old Lau Remedies. In contrast to the five categories of language proficiency specified in the Remedies, the Regulations divided students into three groups: English-superior, primary language superior, and those equally limited. English-superior students could be taught in English, with access to compensatory English if needed. Those with superior proficiency in their native language were to receive native language instruction as well as intensive English classes. Children who were comparably limited could be taught with either an English-only or a bilingual approach.

The Lau Regulations touched off a firestorm of debate -- some having little to do with bilingual education itself. During the creation of the Department of Education, Congress had specifically forbidden the new Department to dictate curriculum to local school districts. Opponents of the proposed regulations contended that the Department was violating that tenet of its charter and was usurping local control of education. Other opponents focused squarely on bilingual education, contending that the programs used too much of the children's native languages, and that the federal government's only responsibility was to support the teaching of English. [2]

Congressional action in the fall of 1980 delayed the implementation of the Regulations until the following June. However, in his first action as President

Ronald Reagan's Secretary of Education, Terrel Bell withdrew the proposed regulations, calling them unworkable and overly burdensome. At the time, Bell promised that revised regulations would be forthcoming shortly; however, none have been promulgated since. In response to questions from school districts, Secretary Bell wrote a letter to all chief state school officers, stating that while the Department was adopting no formal guidelines at that time, OCR would continue to monitor school districts and ensure that language was not a barrier to equal educational opportunity. While districts were presumably free to alter their Lau compliance plans in the aftermath of the Secretary's actions, in the absence of a clear federal policy on compliance with the Lau decision and civil rights statutes, most districts have found it a safer course to continue to abide by their previously negotiated compliance plans than to risk suits from parents or possible prosecution by the federal government at some later point in time.

One other federal statute specifically protects the equal educational opportunity rights of limited-English proficient children. The 1974 Equal Educational Opportunity Act specifies that no institution may deny equal educational opportunity to students on the basis of race, color, sex or national origin, and identifies specific educational practices which are deemed to be discriminatory. One of those practices concerns failure to take steps to overcome language barriers that impede equal participation by language-minority students. Failure to take such action constitutes denial of equal educational opportunity. While this statute refers violations to the Department of Justice and the Attorney General for prosecution and not to OCR, it also gives parents a private right of legal action. Thus, it has provided the basis for much private litigation on behalf of language-minority students.

As enforced by federal executive-branch agencies, civil rights policy for language-minority children, the "stick" of bilingual policy, has been without any specific guidelines for school districts since 1981. Monitoring school districts for compliance with respect to language-minority children also appears to have been far down on OCR's list of priorities. Although OCR has expended little effort to monitor, negotiate or enforce resolution of alleged violations on the part of school districts -- and some school districts have apparently moved away from their agreements in the absence of federal oversight -- the Department has not actively attempted to overturn previous policy or the compliance agreements negotiated prior to 1980 with more than 500 local school systems.

In addition to the role in civil rights enforcement played by federal executive-branch agencies, the educational civil rights of language-minority children are also interpreted by the courts. A significant number of suits have been brought against school districts for failing to design programs to remove educational barriers for language-minority children. Most decisions have shown a consistent adherence to a broad definition of equal educational opportunity which includes access to the school's entire curriculum. Courts have ruled that language-assistance programs used by school districts must be educationally sound, supported by educational theory, and promoted by a recognized education expert. Courts have rejected programs which focus solely on the acquisition of English language skills without providing meaningful access to other content areas, and have rejected programs which provide language assistance to language-minority children for only 30 minutes per day. Courts have also ruled that failure to provide adequate resources to sound programs also constitutes denial of equal educational opportunity. Finally, judicial decisions have also required school districts to regularly evaluate the effectiveness of special programs, and abandon plans which have been shown to be unsuccessful. [3]

B. The Federal Bilingual Education Act

In addition to federal civil rights statutes, Congress also created several discretionary programs to provide assistance to school districts working to remove educational barriers. One such program was authorized by Title IV of the Civil Rights Act of 1964 and provides funds for technical assistance centers to assist desegregating school districts. These Desegregation Assistance Centers (DACs) are available, upon the request of the school district, to provide assistance in designing sound educational programs and policies which meet the spirit and letter of federal civil rights law. Various Centers are funded to provide assistance in equal educational opportunity matters related to race, sex and national origin. The National Origin Desegregation Assistance Centers (NODACs) provide assistance to school districts attempting to remove language barriers.

In 1968, Congress created another discretionary program to provide some limited financial assistance to those school districts implementing bilingual education programs. This program, the Bilingual Education Act, became the federal "carrot," the assistance for school districts operating bilingual education programs. Responsibility for administering this program currently rests with the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) in the Department of Education.

In 1968, Congress amended the Elementary and Secondary Education Act of 1965 to establish Title VII, the Bilingual Education Act. Through Title VII, as the Act has popularly been known ever since, Congress recognized the tremendous educational obstacles facing children of "limited-English-speaking ability" and the responsibility of the federal government to "supplement present attempts to find adequate and constructive solutions to this unique and perplexing situation." Thus, Title VII provided financial assistance to school districts on a competitive grant basis to develop and carry out "new and immaginative elementary and secondary school programs" to meet the special educational needs of these children. While the Act did not further define the types of programs eligible for funding, the name of the statute itself and much of the legislative history indicated that Congress expected that these programs would involve the use of a child's native language.

Congress amended the Bilingual Education Act in 1974 and 1978, and included more specific language as to the characteristics of educational programs eligible for assistance under the statute. The 1974 amendments targeted funds exclusively on bilingual education programs and defined such programs as those which used English and a child's native language to allow a child to "progress effectively through the education system." The 1978 statute increased the program's emphasis on the mastery of English, and defined a program of bilingual education as one in which:

> ...there is instruction given in, and study of, English and, to the extent necessary to allow a child to achieve competence in the English language, the native language of the children of limited English-proficiency, and such instruction is given with appreciation for the cultural heritage of such children, and of other children in American society, and, with respect to elementary and secondary school instruction, such instruction shall, to the extent necessary, be in

all courses or subjects of study which will allow a child to progress effectively through the educational system.

The 1974 and 1978 amendments also created several other programs to be funded by Title VII, including teacher training programs, technical assistance and evaluation centers, materials development projects, and research activities.

Districts which elect to apply for Title VII program funding are required to design a program meeting the criteria outlined in the statute, and submit an application to the Department. Applications are reviewed and assigned a score by independent readers; the Department makes adjustments in ranking to ensure equitable representation of programs among the various geographic regions and language-minority populations. Because the funding for Title VII has always been very limited (the largest appropriation was $172 million in FY 1980), the Department has consistently been unable to meet the demand for assistance. Historically, OBEMLA has been able to award grants to approximately 50% of those who apply for assistance. In 1985, only 32% of all applicants received funding.

Title VII was most recently amended in 1984. The statute was revised in a bipartisan compromise which created several new programs, changed many program definitions and requirements and increased the data collection and evaluation requirements in the law. While continuing to target the majority of Title VII funds on programs of Transitional Bilingual Education, the 1984 amendments also created several new programs eligible for Title VII funding. Newly authorized activities included programs of: Academic Excellence (to strengthen and replicate effective programs); Developmental Bilingual Education (programs which integrate native English speakers with language-minority children and afford all children the opportunity to study in two languages); Bilingual Education for Special Populations (preschool, handicapped and gifted and talented children); Family English Literacy (designed for the families of limited-English proficient children); and Special Alternative Instruction (programs which need not utilize a child's native language). 4

The creation of the Special Alternative Instruction Programs (SAIP) was perhaps the largest departure from past Title VII policy. These programs were created in recognition of the fact that, in some districts, bilingual education may be impractical due to the characteristics of the student population (i.e., too few children from any one language group to form a bilingual class), or because bilingual teachers for the language in question are unavailable. Although these alternative programs are designed to provide school districts with additional latitude in designing programs tailored to meet special needs, they are defined very specifically in the legislation. Such programs are defined as those which:

> ...are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide...structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

Program applications under this category must also contain information about the educational condition of the children to be served, the type and amount of diagnostic

language testing which has been conducted, and the qualifications of the instructional personnel providing services.

The 1984 Bilingual Education Act reserved 4% of existing Title VII funds for these alternative programs, as well as 50% of any new funds appropriated for the Act, up to a maximum of 10% of the Act. This detailed reservation was the product of a bipartisan compromise which allowed the Department to begin to fund some alternative programs immediately, even without an increase in total Title VII funding. Given the newness and experimental nature of the program, and because, absent an increase in funding, such funds would have to come out of money available for bilingual education, the initial allocation was limited to 4% of total funding. Since 50% of new funds would automatically be assigned to all-English programs, the Act also created an incentive for proponents of this approach to seek additional funding for Title VII.

Other new features in the 1984 Act included:

- A requirement that all programs authorized by the Act contain a structured English-language component;
- Expanded parent information and choice requirements -- parents are to be notified of the recommended placement of their child in a special program, apprised of the alternative instructional programs available, and afforded the right to decline placement of their child in either a bilingual of special alternative program; and
- Greatly expanded data collection and reporting requirements, and a requirement that the Department provide districts with evaluation guidelines to improve evaluations and accountability of Title VII programs.

The law was passed by Congress and signed into law by President Reagan as P.L. 98-511 on October 19, 1984. As he signed the bill, the President commented that while he was pleased with the flexibility in instructional approaches included in the legislation, he hoped in the future to work with the Congress to continue to "further expand this much needed flexibility."

III. PREVIOUS REAGAN ADMINISTRATION PROPOSALS

President Reagan's comments about the need for greater flexibility were consistent with the bilingual education proposals advanced by his Administration since 1981. In addition to the Department of Education's elimination of guidance to school districts on protecting the civil rights of language-minority children, the Department also advanced a series of legislative, regulatory and budgetary proposals to redirect Title VII. With respect to Title VII, Secretary Bennett's current bilingual education initiative differ little from these earlier proposals. However, his proposals for changes in civil rights policy represent a dramatic departure from previous Administration initiatives.

Following the recommendations of the Heritage Foundation, the Administration initially proposed to repeal Title VII as a separate program and include bilingual education as an "allowable" activity in a block grant to local educational agencies.

Secretary Bell intervened to amend the proposal and maintain Title VII as a distinct, categorical program, contending that the geographically uneven distribution of limited-English proficient children made a block grant an ineffective mechanism to distribute these funds.

Budget and rescission requests from the Reagan Administration in Fiscal Years 1980 through 1984 sought dramatic cuts in the Title VII budget. While Congress initially adopted some of the cuts advocated by the Administration, reducing the program's appropriation from $172 million in FY 1980 to $134 million in FY 1983, it rejected further proposed Reagan cuts in FY 1983 and 1984 which would have reduced the annual funding to $94.5 million, and restricted funds for teacher training efforts.

In 1982, and again in 1983, the Reagan Administration submitted a bill to Congress proposing substantial legislative changes in Title VII. The proposals sought to repeal statutory language requiring programs funded by the Bilingual Education Act to use a bilingual approach and employ bilingual teachers. The Administration also attempted to reduce the number of children eligible to participate in Title VII-funded programs by proposing to serve only the most "severely limited" children. Although Congressional hearings were held, no action was taken on the bill in either year. [5]

While pursuing a legislative strategy, the Department also explored the possibility of regulatory changes which would allow the funding of all-English programs under the Act. Specifically, the Department asked its General Counsel, Daniel Oliver, to determine whether or not the provisions in the statute directing school districts to use the child's native language "to the extent necessary" could be interpreted to mean that -- in a district's judgment -- no use of the native language was necessary. In Oliver's opinion, the existing legislation did not support such an interpretation.

In another regulatory effort, OBEMLA attempted to utilize a demonstration program which had been established as part of Title VII, to fund a voucher experiment. The proposal would have allowed parents to use a voucher to "buy" special language services for their children from providers outside the public school. Presumably, the children participating in this program would be enrolled in public schools, which could offer the voucher in lieu of providing special language services. This proposal attracted the negative attention of several members of Congress and eventually was dropped by the Secretary.

Finally, in February 1985, under the tenure of Acting Secretary Gary Jones, the Department used the FY 1986 budget to propose a variety of changes in the 1984 Bilingual Education Act signed by the President just a few months earlier. The budget proposals included zero funding for two newly authorized programs, Developmental Bilingual Education and Family English Literacy, and the elimination of the funding reservations created by Congress to determine the proportion of funding to be allocated to transitional bilingual education programs and to special alternative instructional programs. This proposal would have given the Department complete authority to determine what proportion of Title VII funds were directed toward bilingual programs and what proportion to all-English programs. The Department also sought to reduce the proportion of funds allocated to teacher training programs on the rationale that there was already an adequate supply of bilingual teachers.

During hearings on the 1986 budget, the chairman of the Senate Appropriations Subcommittee with jurisdiction over Title VII informed the Department that he did not intend to have the the appropriations process used to make substantive changes in the law, and that such proposals would have to come before the authorizing committees.

IV. THE BENNETT BILINGUAL INITIATIVE

During the Secretary's spring 1985 Senate confirmation hearings, several Senators asked Bennett his opinion of bilingual education and federal bilingual education policy. Mr. Bennett declined to respond, stating that he did not know enough about the subject to have an opinion, but assuring the Senators that he would uphold the law. Although over the next few months Bennett repeatedly declined to answer questions on bilingual education -- deferring comment until a "major policy address" scheduled for the fall -- his "bilingual education initiative" actually began shortly after his confirmation.

The opening volley was the announcement of the Secretary's nominees to the National Advisory and Coordinating Council on Bilingual Education, a national advisory group established by Congress to provide information on bilingual education policy and programs. Bennett renominated three former Council members who were openly opposed to bilingual education and committed to altering the 1984 statute. He also named several new members who publicly aligned themselves with the positions of the three re-appointees. Referring to bilingual education as the "new Latin hustle," and as a plot on the part of Hispanic leaders to keep children in "linguistic bondage," these appointees pronounced bilingual education to be a failure and recommended ESL-only and English-immersion programs in their stead.

Bennett officially launched his "initiative" in a well-publicized speech on September 26, 1985. Based on no new research or findings, the initiative is largely a restatement of previous Administration proposals. Charging that bilingual education has failed to demonstrate its "superiority" over other educational approaches, Bennett promised regulatory and legislative "reforms" in the program. The Secretary's speech included an overview of federal civil rights and funding policy regarding bilingual education. According to Bennett's interpretation, these policies -- based on the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965 -- had sound beginnings, but "went astray."

Regarding civil rights, Bennett asserted that the purpose of the "affirmative steps" required of school districts by the 1970 HEW memorandum was "to teach these students English; and schools were free to use whatever means they judged would be effective in the pursuit of this goal." He also interpreted the Lau decision as endorsing flexibility in approach, and blamed the OCR for misinterpreting the legislation and Court ruling to mandate that programs "be conducted in large part in the student's native language." According to the Secretary, this federal "intrusiveness" and "heavy-handedness" arose out of a "foolish conviction that...local school districts could not be trusted to devise the best means...." Federal policy also departed from its early direction, Bennett said, because the federal government had lost sight of the fact that learning English was the key to equal educational opportunity. Bilingual programs, in contrast, were more interested in promoting "cultural pride" and "producing a positive self-image in the student."

Bennett's review of Title VII policy also described a federal change from a flexible policy to teach English to a prescriptive approach designed to reinforce native language and an appreciation of the cultural heritage of students. The problem leading to the original enactment of the statute, according to the Secretary, was "the inability of many poor children to speak English." The 1968 Act, he said, was a model of flexibility, allowing districts to do whatever they wished. Unfortunately, he continued, the legislation, became mistakenly prescriptive in its 1974, 1978 and 1984 amendments, despite evidence that instruction in the native language was no more effective than programs in which children "simply remained in regular classrooms where English was spoken, without any special help." Bennett concluded that, "mastery of English is the key to individual opportunity in America," and the Title VII program as presently constituted does not advance that goal.

Despite Mr. Bennett's interpretation of past federal policy and research, his specific recommendations for Title VII were repeats of themes which the Reagan Administration has unsuccessfully tried to implement since 1982. Specifically, his proposal to repeal funding reservations in the 1984 statute to allow the Department complete discretion in funding decisions was the same policy advocated legislatively by the Department in 1982, 1983, and 1984, and in the 1986 budget documents. Bennett asserted that the 1984 statute was so "inflexible" with its 4% cap on use of current funding for all-English programs, that the Department was unable to respond to the demand of school districts for all-English programs. According to Bennett, "this year about one-quarter of the applications were for such alternative programs, which unfortunately are limited to four percent of total funds." The Secretary stated that the proposal would increase the "flexibility" of local school districts to "pursue the educational method they judge most promising to teach their non-English speaking students English."

In another repeat of past Administration policy, Mr. Bennett announced his intention to revisit the question of whether or not Title VII statutory language directing the use of native language "to the extent necessary" could be interpreted to mean no use of native language, and thus allow the funding of all-English programs via regulatory changes.

One facet of this initiative which represents a significant departure from past Administration initiatives is Bennett's definition of equal educational opportunity vis-a-vis language-minority children. According to the Secretary, simple provision of instruction in English allows school districts to meet their civil rights obligations in this area. Based on this interpretation, Bennett has stated that Department will be re-examining its civil rights policies regarding bilingual education. Proclaiming bilingual education to be neither better nor worse than any other method of instruction, Department spokesmen have announced an intended redirection of civil rights policies regarding limited-English proficient children, and have invited school districts to re-negotiate their Lau Compliance plans with the Department's Office for Civil Rights. Since these plans were devised during a time when bilingual education was considered to be a superior approach to ESL and "other" approaches, the Department reasons, there is no reason to favor bilingual education programs now that the Department's interpretation of research and program evaluations has concluded that bilingual education is not demonstrably "superior."

Regarding funding for Title VII, Under-Secretary Gary Bauer stated that the Administration had no plans to further reduce funding for Title VII, and suggested

that if Congress would lift the cap on funding all-English programs, the Department would seek to increase funding for Title VII.

The Secretary's proposals were publicly endorsed by President Reagan during an October 1 speech to outstanding school principals. Reagan cited the Secretary's "bilingual initiative," the creation of education vouchers and the establishment of school prayer as his Administration's attempt to improve the nation's schools.

V. ANALYSIS

A. Separating Fact from Fiction

Both Bennett's 16-page speech and the subsequent public statements by his subordinates misrepresented the history of federal bilingual policy and the character of the 1984 Bilingual Education Act. Since many of these substantive mis-statements form the philosophical basis for the proposals, it is important to distinguish historical facts from Bennett's statements.

According to Bennett, equal educational opportunity for limited-English proficient children can be provided simply by making available instruction in English. It is his interpretation that the "affirmative steps" required by 1970 Memorandum merely require schools to "teach these children English." Bennett, then, has redefined the philosophy of "English-only" to imply that providing instruction in English is the only responsibility which school districts have to limited-English proficient children. In fact, school districts have much broader responsibilities. The 1970 Memorandum and the Supreme Court decision in Lau v. Nichols defined the schools' responsibility as taking affirmative steps to remove barriers and accord students full access to the educational programs of the school. Since the educational programs of schools generally include more than just instruction in English, schools must find a way to make the entire curriculum accessible to limited-English proficient children. Providing instruction in English is certainly a part of providing that access; however, absent some other intervention, the child is still denied meaningful opportunity to participate in the rest of the educational program while he or she is mastering English. Justice Douglas was most clear in his assessment that requiring children to master English before he or she can participate in the educational program makes a mockery of education. Teaching English alone will not afford equal educational opportunity.

Bennett uses this same assumption to state that the only goal of the Bilingual Education Act is to help limited-English proficient children become English literate. This is indeed one of the goals of the Act. The 1984 statute included a finding that the federal government has a "special and continuing responsibility to assist language-minority students to acquire the English language proficiency that will enable them to become full and productive members of society." To further underscore the importance of teaching English, the 1984 Act also included the requirement that all programs assisted under the statute include a structured English language component. However, Title VII also has a broader goal. The statute also exists to provide limited-English proficient children with access to the full range of instructional services available in the schools. The statute reflects Congressional interest in the total educational well-being of limited-English proficient children as objectively determined by broad-based criteria specified in the Act. The statute

describes the responsibility of the federal government to assist in providing equal educational opportunity, and requires that all programs funded under the Act be designed to help children meet grade promotion and graduation requirements. This requirement applies not only to bilingual programs, but also to the Special Alternative Instructional Programs assisted under the Act. Thus, a program designed only to provide English-language instruction but making no provision for appropriate instruction in other subjects (via either a non-English language or English depending on the type of program) should not be eligible for funding under the Act.

The Secretary has disregarded the facts when he states that Congress acted out of a "foolish conviction that...local school districts could not be trusted to devise the best means" to serve limited-English proficient students. History is quite clear regarding the "best means" which many local school districts have devised to serve children not proficient in English. The pattern and practice of referring such children to classes for the mentally retarded, routine retention of students in kindergarten and the first grade, the creation of special "Mexican" classes which operated as a dead-end system, and the reliance on "sink-or-swim" schooling is the reason why the federal government got involved in the first place. This history of gross denial of equal educational opportunity, and the continuing proliferation of civil rights complaints and lawsuits today is hardly a "foolish" philosophical notion that local school districts cannot be trusted.

Secretary Bennett and his subordinates have claimed repeatedly that Title VII forces districts to adhere to a specific type of curriculum -- bilingual education. In fact, because Title VII is a discretionary grant program and not a civil rights statute, it does not mandate anything. Its provisions do not apply to school districts which do not choose to apply for funds, but only to those districts which successful compete for and secure Title VII funding. Those districts are bound by the terms and regulations contained in the Act. However, even then, there is considerable flexibility in the statute to accommodate local program variations. First, districts may choose among six program categories -- some of which involve use of a non-English language, some of which do not. Even those which require a bilingual approach do not specify the amount of a non-English language which must be used, nor in which subjects. Finally, districts wishing to use an all-English approach are free to apply for funds under the Special Alternative Instructional Program or Family English Literacy Program.

The funding reservations in the 1984 statute stipulate that 4% of the funds currently available for Title VII ($139 million) be reserved for SAIP programs. However, because Title VII also includes a number of other programs that do not directly serve children in school districts, the set-aside for Special Alternative Instructional Programs actually constitutes approximately 6.6% of the funds available for grants to school districts. If additional funds are appropriated for Title VII, 50% of those monies, up to a maximum of 10% of the total Act, are automatically reserved for Special Alternative Instructional Programs. Thus, any increase would yield a substantially higher percentage of grant money reserved for all-English programs. For example, if the Act were to be funded at $176 million -- the level authorized in the 1984 statute -- the proportion of program grant funds dedicated to all-English programs would be 16.6%. Furthermore, other types of grants to strengthen the development of these programs have also been made through Title VII.

For example, this year the Department awarded a substantial portion of the fellowships for teacher training to programs focusing on alternative instructional approaches. Title VII research funds are also used to conduct research pertinent to this approach.

Admittedly, the language on funding reservations is very complex. This is in part because it was the result of a very delicate bipartisan compromise. However, the Secretary is not correct when he states that 25% of the applications for new grants were for alternative programs but the "inflexible" statute allowed only 4% of the funds to be allocated for this approach. Actually, applications for Special Alternative Instructional Programs comprised only 14% of all applications for new Title VII grants in fiscal year 1985. The Secretary did not include all the grants made under the Act's training sections in his calculations. Due to the inadequate funding for Title VII, no category of applications was able to be funded in sufficient number to match demand. This year, Title VII succeeded in funding only 32% of the applications received. The proportion of applications for Special Alternative Instructional Programs which received funding was no different from the average proportion of grant applications funded, and was in fact higher than the proportion of several other types of applications funded.

According to figures provided by OBEMLA, 33% of Transitional Bilingual Education applications were funded, 32% of Special Alternative Instructional Programs proposals, 18% of requests for Developmental Bilingual Education, 35% of Training Grant applications, 8% of Family English Literacy requests, 31% of proposals for programs for Special Populations, 11% of Materials Development proposals, and 56% of requests for Fellowship Programs. Thus the programs which the Department dramatically underfunded relative to demand were the Developmental Bilingual Education, Family English Literacy, and Materials Development Programs -- not the Special Alternative Instruction Programs. The program which is least prescriptive regarding approach and relies the most heavily on English instruction -- the Family English Literacy Program -- was the most underfunded relative to demand.

Regarding the Department's offer to seek additional funding for Title VII if the 4% cap were to be lifted, there are several reasons for skepticism. As one of the Act's Republican co-sponsors, Congressman Steve Bartlett (R-TX) commented to the press, a great deal more flexibility could have been provided in fiscal year 1985 with additional funds, since 50% of new funds would have been earmarked for such programs. However, not only did the Administration not seek additional funds, but it also asked several key Congressional Republicans not to seek such funding. Additionally, Congressional concern about the deficit has risen to the point that increases in educational programs have been almost non-existent over the past two years. While providing adjustments for inflation for some programs serving poor children, Congress has also level-funded most other education programs and moved to eliminate funds for some newer education programs. Thus, the budget climate makes it highly unlikely that Congress would approve any significant increase in funds for Title VII even if the Administration were to request it.

Finally, Bennett's contention that bilingual programs provide no better result than placing a child in a "regular" classroom with no special instruction is false. In addition, such an approach is illegal. It is indeed true that evaluation reports of bilingual programs are mixed, as are evaluation reports of many educational programs. There are a great many confounding variables and it is difficult to scientifically prove that a child's advancement is attributed specifically to his or

her participation in a bilingual program. However, this says as much about the state of program evaluation and the difficulty of conducting experimental-design research studies in public schools, than it does about whether or not bilingual education is "effective." [6] Various researchers have suggested that conducting implementation evaluations may be a more appropriate function for school districts.

It has also become apparent, from a marathon review of Title VII evaluations conducted by the Department of Education in 1981, that many school districts do not have the resources or expertise to conduct experimental-design evaluations which are methodologically sound. The authors of that review found that only 28 of 300 studies met their criteria for soundness. [7] Other researchers have also been forced to rely on small sample sizes due to flaws in many of the bilingual evaluations. Depending upon which studies are included in reviews on the effectiveness of bilingual education, conclusions vary. Baker and DeKanter's 1981 review reported mixed results -- sometimes bilingual education was associated with superior results, sometimes not. However, a 1985 review of the same literature, conducted by Ann C. Willig of the University of Texas at Austin, employed statistical controls for methodological inadequacies, and reported that

> participation in bilingual education programs consistently produced small to moderate differences favoring bilingual education for tests of reading, language skills, mathematics, and total achievement when the tests were in English, and for reading, language, mathematics, writing, social studies, listening comprehension, and attitudes toward school or self when the tests were in other languages. [8]

The need of school districts for assistance in designing and carrying out sound evaluations was brought before Congress repeatedly in testimony during the 1984 reauthorization hearings and led to the establishment of several evaluation assistance centers, the requirement for specific types of data collection, and the directive for OBEMLA to design evaluation guidelines to help school districts in this regard.

One difficulty in evaluating the effectiveness of bilingual education programs is that there is so much local variability in program designs that the the term "bilingual" is actually used to describe many different types of programs. Programs differ tremendously in the amount of instruction offered in the native language and the amount of time dedicated to the formal study of English. For example, a recent study of bilingual programs in the third and fifth grades in the San Francisco Unified School District shows that the children's native language is used for only 8% of instructional time. [9] Teaching methodologies, class size, testing implements and curricular materials differ from program to program. The qualifications of teachers and instructional aides in bilingual programs also varies from district to district, and even from school to school. Some schools employ only specially credentialed, bilingual and biliterate instructional personnel, others assign monolingual English-speakers, or marginally bilingual teachers with no special instructional credentials to teach in "bilingual" programs. Given this great variability, comparisons between bilingual programs can be as meaningless as comparing apples to oranges. Thus, it is very important to examine the particular characteristics of the bilingual program in question.

Additionally, given the complex goals of bilingual education -- to provide children with English language skills and meaningful participation in the rest of the

school curriculum -- evaluations of bilingual education programs need to examine more than children's scores on a standardized English language test, which is, unfortunately, the sole measure used in most cases.[10] The 1985 meta-analysis noted above Some reported positive results for bilingual programs on a variety of measures including English language skills, other subject matter and attitudes. Additionally, some research suggests that participation in bilingual education programs may be associated with lower dropout rates, and since approximately 50% of Hispanic youth drop out of school, such an effect is a persuasive indicator of success. The recent gains in Hispanic educational attainment indicated in the longitudinal assessment of reading scores conducted by the National Assessment for Educational Progress, and the gains reported in Scholastic Aptitude Test scores are encouraging. Several educators have suggested that they may in part be due to the fact that the students in question were attending elementary schools during the time that Head-Start, compensatory and bilingual education programs became available. The fact that the gains are not larger may have something to do with the fact that very few limited-English proficient children are actually enrolled in bilingual education programs. Figures from the Department of Education suggest that only one-fourth of such children are participating in bilingual education programs.

In addition to Willig's metanalysis, some of the most persuasive evidence that bilingual education "works" can be found in research on language acquisition and learning. As summarized by Dr. Kenji Hakuta, a psycholinguist from Yale University, this research suggests that:

- Second language acquisition is most successful when there is a strong foundation in the first language;
- Children can become fluent in a second language without losing the first language; maintenance of the first language does not retard the development of the second language;
- The ability to use language effectively for conversation does not imply an ability to use it well in academic tasks, nor does ability to use language in academic tasks imply good conversational skills;
- Conversational skills in a second language are learned earlier than the ability to use the language for academic learning;
- Bilingualism in children -- in the sense of being able to use both languages in academic rather than conversational settings -- is associated with the development of the ability to think abstractly about language and to appreciate its form, as well as with the development of cognitive skills in general;
- Academic skills learned in school transfer readily from one language to the other, so that skills taught in the native language in transitional bilingual programs do not have to be re-learned in English;
- Older children acquire the second language more quickly because they have a stronger base in the first language; and

The extreme specificity of the 1984 Bilingual Education Act should make it difficult for Mr. Bennett to implement most of his desired changes via regulations. In fact, the 1984 statute specifically forbids the alteration of program definitions via regulations. The Department's General Counsel had called that fact to the Secretary's attention in an internal memo several weeks before the September speech. So, even if Bennett is successful in persuading the Department's new General Counsel to reverse the previous interpretation of the statutory language on use of the native language "to the extent necessary," such regulatory redefinition is forbidden. However, the Department has announced its intention to publish a new interpretation of "to the extent necessary" as a non-binding introduction to Title VII program regulations, as part of an attempt to encourage the development of programs which make little or no use of non-English languages. The Department is now re-writing Title VII regulations for scheduled release in early November.

Any changes in Title VII are monitored closely by states and local school systems. An increased reliance on English-only programs by the federal government is a powerful message to state houses and local boards of education. It is likely that a move to abandon bilingual education at the federal level will make it more difficult for many states and local districts to operate bilingual programs. For example, the California bilingual education law must be reauthorized next year, and advocates are poised for a difficult battle based on federal pronouncements of the "failure" of bilingual education.

Perhaps the most troubling effect of Mr. Bennett's bilingual initiative concerns his contention that a school district's only responsibility to limited-English proficient children is to teach them English. This interpretation, coupled with plans to agressively re-negotiate Lau Compliance Plans, some of which have been in effect for a decade, could undermine the bilingual education efforts of over 500 school districts. If school districts, with the blessings of the Office for Civil Rights, begin to narrow their special programs for limited-English proficient children, parents will have little recourse but to resort to the courts -- a lengthy process which often does not provide relief to the children who are initially adversely affected.

Even if Mr. Bennett never succeeds in implementing any of his bilingual "initiative," his refusal to accept and implement a bipartisan law, developed after careful compromise and just before the election last year is troubling. The President's endorsement of Mr. Bennett's plan also calls into question whether the Administration ever intented to abide by the compromise. The "initiative" undermines the careful work done in good faith by members of Congress last year to find a way to improve educational opportunities for children and make needed changes in the bill. The Bennett initiative and the Secretary's accompanying rhetoric reopens an acrimonious and emotional debate which often has less to do with children and how they can best learn, than with xenophobic fears. Bennett's labeling of bilingual education as a failure, chastisement of the Hispanic community for putting "cultural pride" above the learning of English, and statements by his appointees accusing Hispanic elected officials of deliberately conspiring to keep Hispanic children in "linguistic bondage," have seriously damaged any possible relationship with the Hispanic community.

- Adults are as capable as children of acquiring a second language, with the possible exception of accent. [11]

In the experience of many states and school districts, bilingual programs which are based on the above research, use appropriately trained teachers, and are effectively implemented, have yielded good results. Bilingual programs in most of the school districts where the largest numbers of Hispanic children attend school report that children in their programs are progressing effectively. Whether or not bilingual education "works" and is "superior" to any other method which might possibly be devised will no doubt continue to be a matter of debate. Still, this is more often a political than pedagogical question. At this time, there is no doubt that bilingual programs offer a child a more complete education than programs which only provide instruction in English language arts. It is also currently the only approach which provides the possibility of meaningful parental involvement to parents who do not speak English.

As to the effectiveness of the 1984 Bilingual Education Act, neither Congress, nor the public, nor the Secretary has enough information to make an informed determination. The Act was signed in October 1984, but because of federal funding cycles, the first year of grants made under the new Act has just commenced. In fact, the Secretary passed his verdict on the Act before the funds for the first program year had even been sent to the schools. It is far too soon to determine whether or not the legislation is accomplishing the job which Congress intended. However, according to statements made by Congressman Augustus Hawkins (D-CA), chairman of the House Committee with jurisdiction over the program, Congress will be keeping a watchful eye on the progress of the program and the degree to which the Department of Education implements the law.

B. Implications of Bennett's Bilingual Initiative

Should Secretary Bennett succeed in accomplishing any of his stated "bilingual education initiative," educational opportunities for limited-English proficient children could take a giant step backward. The most immediate and visible effect of reallocating a fixed amount of Title VII money to increase funding for Special Alternative Instructional Programs is that the amount of money available for bilingual education programs will inevitably be reduced. Given the tight budget situation, a large increase in funding for Title VII is very unlikely. Furthermore, given the ideological predisposition of the Secretary and his subordinates toward all-English programs, any proposal which awards the Department complete discretion in the allocation of Title VII funding is certain to result in a preponderance of awards for Special Alternative Instructional Programs.

However, the elimination of the 4% cap can only be accomplished by Congressional action, and at this point it appears unlikely that Congress will devote any time to this issue. Statements from key members of Congress and staff indicate that the authorization committees in both houses have a full agenda this year and see no reason to reopen debate on this issue so soon after they reauthorized the Act. Given the limited likelihood of action on this proposal by the authorizing committees, there is an increased possibility that the Department will seek to circumvent this process and attach the proposal as an amendment to another piece of legislation, or seek to implement changes via altered regulations.

VI. RECOMMENDATIONS

The National Council of La Raza played a significant role in developing the Bilingual Education Act of 1984 and firmly supports the law. The Council believes that the Department of Education has the responsibility to fully implement the terms of the statute, and that any changes in the law at this time would be premature. The proper forum for such debate is the reauthorization process provided by Congress.

The National Council also supports additional funding for Title VII -- under the current terms of the Act. Based on the tremendous need for programs to improve the English literacy of Hispanic parents and the Department's lack of commitment to adequately funding this program, La Raza has advocated that additional funds for Title VII be divided between the Special Alternative Instructional Programs (as mandated by law) and the Family English Literacy Programs. Given the Department's past reluctance to fund the Literacy program, Congress should probably establish a separate line-item for this program so that funds recommended for family literacy cannot be diverted elsewhere. While this proposal would not immediately provide additional funds for bilingual education programs, it addresses the pressing need for additional funding for Family English Literacy Programs and abides by the terms of the 1984 compromise to provide additional funds for well-structured alternative programs. As the budget situation improves, La Raza will continue to press for more a more adequate level of funding for the other programs authorized under Title VII as well.

Given Mr. Bennett's disregard for the statute and intention to use the regulatory process to circumvent the law, the National Council also believes that careful Congressional oversight of the Department's administration of the Title VII program would be wise. Furthermore, the Department's propensity to use Title VII funds to generate "research" which has a distinctly anti-bilingual education slant, causes the Council to conclude that Congress would be well served to independently monitor the data collection process and analyze the data which the 1984 statute requires OBEMLA to collect.

Similarly, the Secretary's interpretation of federal civil rights history indicates that strict Congressional oversight is needed regarding Mr. Bennett's civil rights policies. Congress should begin to closely monitor the Department's activities and interpretations of school districts' responsibilities under Title VI of the Civil Rights Act regarding language-minority children.

Finally, Mr. Bennett's inflamatory rhetoric, ill-considered bilingual advisory council appointments, and policies which would reduce educational opportunities for Hispanic children, have called into question his fitness to serve as Secretary of Education. The Department of Education must be headed by an individual sensitive to the educational needs of all children, and dedicated to fulfilling the federal government's responsibility to promote equal educational opportunity.

ENDNOTES

1 For a more detailed discussion of the development of federal civil rights policy regarding language minority children, see The Best of Two Worlds: Bilingual-Bicultural Education in the U.S., Diego Castellanos, New Jersey State Department of Education, 1984.

2 For additional information on the Lau Regulations and the circumstances surrounding their withdrawal, see "Bilingual Education and the Lau Regulations," Tomas Saucedo, Lori Orum and Rafael Magallan, National Council of La Raza, March 1981.

3 For further information on the legal responsibilities of school districts, see "School Districts Must Still Obey the Law," Norma Cantu, Education Director, Mexican American Legal Defense and Education Fund, Caucus News, National Caucus of Hispanic School Board Members, October 1985. Also, see Castaneda v. Pickard, 648 F 2d. 989 (Fifth Circuit, 1981), and Keyes v. School District No. 1, 576 Fed. Supp. 1503 (District Court, Colorado, 1983).

4 Additional detail on the features of 1984 Bilingual Education Act and the involvement of the Hispanic community in its development is contained in "The Bilingual Education Act of 1984: Community Involvement in Policy Development," Lori Orum, National Council of La Raza, November 1984.

5 An analysis of the Reagan Administration's legislative proposals to amend the Bilingual Education Act is contained in "Analysis of the Administration's Proposals to Amend the Bilingual Education Act," Lori Orum, National Council of La Raza, March 1983.

6 A detailed discussion of problems inherent in conducting research on bilingual education is contained in "A Meta-Analysis of Selected Studies on the Effectiveness of Bilingual Education," Ann C. Willig, Review of Educational Research, Vol. 55, No. 3, Fall 1985, pp. 269-317.

7 Additional information about the 1981 literature review on bilingual education conducted by the Department of Education is available in The Effectiveness of Bilingual Education: A Review of the Literature, Keith Baker and Adriana DeKanter, Washington, D.C., Office of Planning, Budget and Evaluation, U.S. Department of Education, 1981.

8 Willig, op cit.

9 Additional information on the San Francisco study is contained in "Final Report for Learning English Through Bilingual Instruction," Lilly Wong Fillmore, et.al., National Institute of Education contract #400-80-0030, June 1985.

10 A more detailed discussion of the type of evaluation design needed for bilingual education programs is provided in "The Question of Effectiveness: A Blueprint for Examining the Effects of Federal Bilingual Education Programs," Lori Orum, National Council of La Raza, September 1982.

11 Additional information on Dr. Hakuta's research is detailed in his book, Mirror of Language, Kenji Hakuta, Basic Books, New York, 1985.